

# Memorandum

To : File

Date : January 30, 1989

From : **FAIR POLITICAL PRACTICES COMMISSION**  
John McLean

Subject: Advice No. T-88-438

In December, I spoke to Dennis DeCuir regarding this advice request. I informed that it appeared there was a good chance that NCPA would not be sending out more than 200 non-exempt pieces. Many of the pieces he listed in his letter are exempt from the 200 piece count, e.g. pieces to other government agencies or to the news media. I sent him a copy of the final regulation. He believes that is all he needs. He will write back if he needs more.

McDONOUGH, HOLLAND & ALLEN

A PROFESSIONAL CORPORATION

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DENNIS W. DE CUIR

November 10, 1988

Fair Political Practices Commission  
428 J Street, Suite 800  
P. O. Box 807  
Sacramento, CA 95804-0807

Subject: Request for Formal Written Advice  
Mass Mailing Regulations  
Northern California Power Agency

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FPPC

Dear Commissioners:

Northern California Power Agency ("NCPA") is a joint powers agency that develops and supplies wholesale electrical power to its member agencies. Our office serves as general counsel to NCPA.

Each year, NCPA prepares and distributes an annual report. NCPA, through its commission, has requested that we seek your advice on whether its annual report, as presently formatted and based on its current mailing list, constitutes a prohibited mass mailing under the new amendments to Government Code sections 82041.5 and 89001, and the regulations adopted to implement these sections.

We make this request pursuant to subdivision (b) of section 83114 of the Government Code, in the interest of expediting guidance for the public officials who serve NCPA, whose annual report is due for mailing.

*NCPA's Membership and Governing Body Composition.*

NCPA is a public agency, separate from its member agencies, and is established by a joint powers agreement. It's members are the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara and Ukiah, the Plumas-Sierra Electric Cooperative and the Turlock Irrigation District. NCPA develops and provides electrical power to its member agencies. The members provide electric power to their residents.

NCPA is governed by a commission appointed by its members. Under the joint powers agreement, each member agency appoints one commissioner. The commissioner may but need not be an elected official of the member agency. The chair and vice chair of the commission are selected by the members of the commission. Presently, the chairperson

of the NCPA commission, the vice chair and seven of the commissioners are elected officials of their agencies. The remaining three commissioners are employees of their agencies.

*Identities of Persons Requesting Advice.*

We request your advice on behalf of the commissioners, alternate commissioners, officers, management, and staff of NCPA who will be identified in the NCPA annual report which is ready for publication, a rough draft of the text of which is attached to and incorporated into this request as Exhibit A. The roster attached to and incorporated into this request as Exhibit B includes their names, addresses, phone numbers and positions. The persons listed after the title "Honorable" are councilmembers who hold office as commissioners of NCPA by the pleasure of the councils of the cities which appointed them. The persons listed under the heading of "Alternates to the Commissioners" serve in the place and stead of commissioners from the member entities, and where such persons are also councilmembers, they are identified as such. Otherwise the persons identified in the roster are management or staff of the member entities of NCPA.

*NCPA's Annual Report.*

Each year, NCPA prepares an annual report. This report serves three purposes. First, and most importantly, NCPA is required to prepare and distribute its annual report to persons or entities interested in its financial condition. Second, the annual report is used to inform its member agencies, the press, investors, credit rating agencies, and its consultants and contractors of NCPA activities and NCPA's financial status. Third, the report provides information to persons of varied backgrounds and interests, from other governmental entities, legislative aides, lobbyists, news organizations, to citizens.

NCPA has issued many hundreds of millions of dollars of bonds. NCPA is required by its various bond indentures to furnish its annual report to persons and institutions in the financial community. As an example, by its Fifth Supplemental Indenture of Trust relating to Geothermal Project Number 3 for NCPA's \$606,555,000 Geothermal Project Number 3 Revenue Bonds, 1987 Refunding Series A, NCPA must provide to Bond Investors Guaranty Insurance Company

"(i) its audited financial statements and quarterly financial statements, (ii) *its annual report*, (iii) all reports, certificates and financial information required to be filed with the Trustee pursuant to the Indenture of Trust or available at the request of Bondholders and (iv) all reports or certificates prepared by the Consulting Engineer pursuant to the Indenture of Trust."  
(Emphasis added.)

In a Letter of Credit and Reimbursement Agreement with Swiss Bank Corporation NCPA obliged itself to furnish the annual report to the Bank not later than 120 days after the end of each fiscal year. \$68,000,000 Northern California Power Agency Combustion Turbine Project Number One Adjustable Rate Revenue Bonds, 1985 Refunding Series A, at p.18.

It is customary that periodic disclosures be made to lists of interested parties. *State & Local Government Debt Financing*, Volume 2, Gelfand (1988), sec. 8A:50, at p.

9. Any photographs or signatures in NCPA's annual report serve to familiarize persons interested in the financial condition of NCPA, bondholders, trustees, insurers, investors, underwriters, and analysts, with the names, faces, and capacities of the persons responsible for NCPA's financial condition, with whom they come into contact in the course of analyzing NCPA as a credit risk. For example, NCPA commissioners and management staff periodically visit bond rating agencies and investor groups in the major money centers to discuss NCPA's financial condition. The annual report aids these discussions by not only giving financial detail but by personalizing the presentation of management's view of NCPA's condition. The rating agencies and investor groups are not voters. The commissioners of NCPA who happen to be councilmembers on city councils of the member entities of NCPA are not identified in the NCPA annual report as councilmembers of any particular member city. The general audience of the annual report is not the electorates of the member entities of NCPA.

*Format of the Annual Report.*

A copy of the 1986-87 annual report is enclosed as a sample and incorporated into this request as Exhibit C. The format of the 1987-88 annual report, with a picture of the NCPA commission and the chairman (Exhibit A), will be similar to Exhibit C.

Since the annual report is used primarily in the financial community, NCPA has patterned its annual report after the reports issued by other publicly and privately owned utilities.

The report, therefore, includes a "report from management" signed by the chairman of the commission and the general manager. (See Exhibit C, Annual Report p. 4-5.) It also includes a picture of the commission and the names of the commissioners and alternates. The report identifies each commissioner's and alternate's agency but does not state the position held by the commissioner or alternate with the member agency. (See Exhibit C, Annual Report p. 2.)

*Mailing List for the Annual Report.*

A copy of the current mailing list for the annual report is attached to and incorporated into this request as Exhibit D. As you will see, the annual report is proposed to be mailed to 558 individuals and entities. While we have not done a complete breakdown of the organizations that receive the annual report, the mailing list may be characterized as follows:

1. Within California, the annual report is sent to:
  - 145 public agencies,
  - 31 news organizations,
  - 48 financial institutions, underwriters and other organizations involved in the financing of NCPA projects.
  - 39 contractors, consultants and attorneys under contract with NCPA.
  - 26 individuals or businesses that have not been classified, including members of congress, legislative aides, lobbyists or interested businesses or citizens.

2. The remaining 269 entities receiving the annual report are located outside of California. They can be characterized as follows:

- 113 public agencies,
- 2 news organizations,
- 78 financial institutions, underwriters and other organizations involved in the financing of NCPA projects.
- 42 contractors, consultants and attorneys under contract with NCPA.
- 34 individuals or businesses that have not been classified, including members of congress, legislative aides, lobbyists or interested businesses or citizens.

Based on this mailing list, we would like your advice on whether the annual report, in its present format, would constitute a prohibited mass mailer.

If you require additional information, please let us know.

We would appreciate your reply as soon as possible. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dennis W. De Cuir", with a stylized flourish at the end.

Dennis W. De Cuir

DeC:del

Enclosures

cc: Michael W. McDonald



# California Fair Political Practices Commission

November 18, 1988

Dennis W. De Cuir  
McDonough, Holland & Allen  
555 Capitol Mall, Suite 950  
Sacramento, CA 95814

Re: 88-438

Dear Mr. De Cuir:

Your letter requesting advice under the Political Reform Act was received on November 15, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, reading "Diane M. Griffiths", is written over the typed name.

Diane M. Griffiths  
General Counsel

DMG:plh